In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 668

WILLIE BRISTOL WATSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This suit was brought by petitioner under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 *et seq.*, alleging medical malpractice on the part of Dr. John B. Morris, a Public Health Service Physician. The district court, after trial, entered judgment dismissing the complaint, finding (1) that there was no malpractice, and (2) that, even if there was malpractice, there was no causal relationship between the malpractice and the damages suffered by petitioner. The court of appeals affirmed.

1. Petitioner claims that the district court violated the Full Faith and Credit Clause in "refusing to accept" the testimony of Dr. Robinson, one of petitioner's witnesses (Pet. 2, 5). This claim has no fac-

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tual basis. The court did not refuse to accept Dr. Robinson's testimony. He was permitted to testify about everything but the Georgia standard of care, with which, he testified, he was not familiar (see testimony reproduced in appendix to the brief for the United States in the court of appeals, p. 25); and when petitioner was not able to produce Dr. Robinson the following day, the court—over the objection of the United States—accepted a previously taken deposition of Dr. Robinson's.

2. Petitioner's contention that Georgia law does not apply is clearly without merit. The Tort Claims Act applies "the law of the place where the act or omission occurred." 28 U.S.C. 1346(b).[1] At all events, the question of the proper standard of malpractice applicable in this case is, at this point, immaterial. For even if there was malpractice, petitioner cannot recover, because he failed to establish a causal relationship between the alleged malpractice and the damages he suffered.

3. Petitioner's remaining contentions, in effect, ask this Court to reexamine the fact findings of the district court, upheld by the court of appeals. The cor-

[1] The law of the place where the act or omission occurred is clearly the law of Georgia. For even if the Public Health Service hospital in Savannah, Georgia, where the alleged malpractice occurred, is a federal enclave, the court of appeals correctly noted that the tort law of Georgia would be applied by virtue of 16 U.S.C. 457, which, so far as is here relevant, makes the law applicable in federal enclaves that of the State in which the enclave is located. 42 U.S.C. 249, which petitioner also cites, merely lists the classes of persons who may seek treatment at Public Health Service hospitals; it does not establish or define any standard of care.

rectness of those findings is not an issue justifying review by this court. Moreover, it is clear that they were supported by ample evidence (see Pet. 12–16).

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

NOVEMBER 1965.

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